

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 03-30957-WRS

Chapter 7

CHARLES ROLAND COLEMAN,

Debtor.

ANITA SMITH,

Plaintiff,

v.

Adv. Pro. No. 03-3100-WRS

CHARLES ROLAND COLEMAN,

Defendant.

**MEMORANDUM DECISION**

This Adversary Proceeding came before the Court for trial on January 8, 2004. Plaintiff Anita Smith was present in person and by counsel H. Marie Thornton. Defendant Charles Roland Coleman was present in person and by counsel Debora Palmer. The Court heard testimony from both parties and received several documentary exhibits into evidence. At the close of the evidence, the Court took the matter under advisement. For the reasons set forth below, the Court will enter judgment for the Plaintiff. The subject liabilities are determined to be excepted from the Debtor's discharge pursuant to 11 U.S.C. §§ 523(a)(5) and (6).

**I. FACTS**

The parties were married at one time, having been divorced pursuant to a decree entered January 27, 1997, in a civil action styled In re The Marriage of Anita F. Coleman and Charles R.

Coleman, Case No. DR-96-1515, in the Circuit Court of Montgomery County, Alabama, Domestic Relations Divison. (DX1)<sup>1</sup> Theirs was not a happy parting and the Circuit Court, in Paragraph 19 of the Divorce Decree, enjoined each of the parties from harassing the other. The Divorce Decree made elaborate provisions for the support of the children and the division of property. On April 7, 1997, the Circuit Court entered a second order because Smith (formerly Anita Coleman) had filed a Motion to Amend and Show Cause. (DX1). The April 7, 1997 Order imposed several liabilities upon Coleman, which are at issue here.

On March 26, 2003, Coleman filed a petition pursuant to Chapter 7 of the Bankruptcy Code in this Court. (Case No. 03-30957). The Court entered a discharge in that case on October 26, 2003. (Case No. 03-30957, Doc. 21). On June 23, 2003, Smith filed a timely complaint to determine the dischargeability of the liabilities imposed upon Coleman pursuant to the Circuit Court's April 7, 1997 Order.<sup>2</sup>

The parties represented to the Court that Coleman's child support delinquency is \$27,258.12. It is undisputed that child support is excepted from the Debtor's discharge. 11 U.S.C. § 523(a)(5).

The Circuit Court of Montgomery County awarded Smith a judgment in the amount of \$10,000.00 because Coleman converted a boat, which should have been turned over pursuant to the

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<sup>1</sup> The Court will use the following convention to make reference to the trial exhibits: DX\_\_ for Defendant's Exhibit and PX\_\_ for Plaintiff's Exhibit.

<sup>2</sup> Smith relies on two separate provisions of Section 523(a) in support of her case. To the extent that she relies upon Section 523(a)(6), her complaint must be filed within 60 days of the date of the meeting of creditors. FED. R. BANKR. P. 4007(c). To the extent that the Plaintiff relies upon Section 523(a)(5), there is no limitation on when such an Adversary Proceeding may be brought. In this case, the bar date was June 23, 2003. (Case No. 03-30957, Doc. 3). Therefore, the complaint was timely filed.

January 27, 1997 Divorce Decree. (Paragraph 3 of the April 7, 1997 Order at DX1). An additional \$1,050.00 was awarded, pursuant to Paragraph 4 of the April 7, 1997 Order, for Coleman's failure to turn over Smith's wedding band, purse, briefcase and contents. (DX1). In addition, several household items were not turned over. As set forth in Paragraph 6 of the April 7, 1997 Order, the alternative value of the items, if unreturned, is \$3,500.00. (DX1). As a final matter, a fee of \$200.00 was awarded to Smith's counsel. (Paragraph 8 of the April 7, 1997 Order at DX1). Therefore, the liabilities total \$14,750.00, excluding the child support delinquency.

Coleman argues that this amount should be reduced as a result of certain inequitable conduct on the part of Smith. Subsequent to entry of the April 7, 1997 Order, Smith located the boat, for which she had been awarded \$10,000.00. Smith executed on the judgment and the boat was seized and sold at a public sale. The boat was purchased by Smith's present husband for \$26.00. (DX2). Coleman argues that it is inequitable for Smith to have both the boat and a judgment for \$10,000.00, less only \$26.00.

## **II. ISSUE**

The issue is whether the liabilities imposed upon Coleman, pursuant to the April 7, 1997 Order of the Circuit Court of Montgomery County, are excepted from discharge pursuant to 11 U.S.C. § 523(a)(6), for the willful and malicious injury done to the property interests of Smith.

## **III. CONCLUSIONS OF LAW**

This is an adversary proceeding to determine whether certain liabilities are excepted from discharge pursuant to 11 U.S.C. § 523(a). This Court has jurisdiction to hear this Adversary Proceeding pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. §

157(b)(2)(I).

Section 523(a) of the Bankruptcy Code provides, in part, that:

(a) A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt—

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(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

11 U.S.C. § 523(a)(6). The question presented is whether the instant liabilities are excepted from the Debtor's discharge pursuant to this provision.

The burden of proof is on the Plaintiff to show that the liabilities in question are excepted from discharge. To prevail under this provision of the Bankruptcy Code, the Plaintiff must show that the Defendant intended the injury and not merely the acts which lead to the injury. Kawaauhau v. Geiger, 523 U.S. 57, 61-63 (1998); Farris v. Ciuzio, (In re Ciuzio), 234 B.R. 822, 824 (Bankr. M.D. Ala. 1999); Wiggins v. Sanders, (In re Sanders), 234 B.R. 818, 820 (Bankr. M.D. Ala. 1998).

The Court, having considered the appropriate legal standard, having considered the documentary evidence, including the pertinent decisions of the Circuit Court, having heard the testimony of the parties and having considered the arguments of counsel, finds that the Plaintiff has carried her burden of proof. The liabilities in question are excepted from discharge on the grounds that they resulted from the willful and malicious injury caused by the Defendant to the property of the Plaintiff.

The Court will address a collateral issue raised by Coleman in his defense. Paragraph 3 of the April 7, 1997 Order of the Circuit Court of Montgomery County awarded Smith \$10,000.00 as a result of Coleman's failure to turn over a boat as required of him under the Divorce Decree. Smith,

acting through her husband, purchased the boat at a Sheriff's Sale for only \$26.00. Coleman argues that it is inequitable to permit Smith to keep almost all of the \$10,000.00 judgment as well as the boat. Perhaps Coleman is right. Perhaps the Circuit Court of Montgomery County may see it differently. This Court expressly declines to rule on that question. Rather, this Court simply determines that the various indebtedness (whatever the current balance owing is at this time) which arose under the April 7, 1997 Order are excepted from discharge pursuant to 11 U.S.C. § 523(a)(6). The parties may argue, in Circuit Court, the question of whether Smith should be charged with a \$26.00 satisfaction or a \$10,000.00 satisfaction as a result of her husband's purchase of the boat at the Sheriff's sale. The divorce court is a better forum than is the Bankruptcy Court for the resolution of that question. The Court will enter judgment by way of a separate document.

Done this 4<sup>th</sup> day of March, 2004.

/s/ William R. Sawyer  
Chief United States Bankruptcy Judge

c: H. Marie Thornton, Attorney for Plaintiff  
Debra Palmer, Attorney for Defendant